[ORIGINAL CIVIL JURISDICTION]

IN THE ESTATE OF SIM SIEW GUAN DECEASED.

[IN FORMA PAUPERIS—PROBATE (SINGAPORE)

No. 321 OF 1923.]

Chinese Divorce—Validity of the divorce of a Secondary wife (tsip)—Customs in China as to divorces—Grounds for divorce—Declaration for divorce—Expert evidence.

The customs in China as to divorce are more or less alike and a Chinese could divorce his secondary wife if she disobeyed the orders of the principal wife or if she violated the rules of the family, or for immorality or disobedience to her husband.

The prevailing custom amongst the Chinese is for the husband to inform his clansmen or his relations that he had divorced his secondary wife. A public declaration, it is believed, is essential to the validity of the divorce.

Petition for Letters of Administration of the Estate of Sim Siew Guan deceased.

Chan Hong Neo *alias* Chan Siew Neo *alias* Chan Siew Teck was admitted to be the principal wife (*tsai*) of the deceased who died intestate in Singapore. She petitioned for Letters of Administration. Tan Sai Im claimed to be a lawful secondary wife (*tsip*) of the deceased and, as such, to be entitled to a share in his estate. She entered a caveat against the petition of Chan Hong Neo.

Thereupon an issue was directed to be fixed as to "Whether Tan Sai Im was a lawful widow of the deceased and as such entitled to a share in the estate of the said deceased or not."

The claim of Tan Sai Im was resisted by Chan Hong Neo on the ground that Tan Sai Im had been divorced by the deceased during his lifetime.

It was proved that a form of marriage ceremony had taken place between the deceased and Tan Sai Im.

Tan Sai Im in evidence stated that it was usual for all the wives and children and immediate relations to attend the funeral of advanced men and before the body was taken from the house to burn joss sticks and to perform certain ceremonies. They also had to perform certain ceremonies at the grave. She did not do these things because she was ill at the time. She said it was customary for widows to remain in mourning for 3 years during which they might not wear bright coloured clothing, only black and white. She stated that she left the house of Sim Siew Guan some time before his death but after she left his house the deceased visited her several nights a week up to the time of his fatal illness.

Mr. Eber contended that if Tan Sai Im had been a secondary wife, she was subsequently disowned and discarded. She was not regarded as and in fact was not a secondary wife. She did not attend the funeral and made no attempt to perform the widow's ceremonies. With the Chinese there is no such thing as a divorce in the sense of the term as it is applied to Christian marriages. Amongst Chinese in regard to secondary wives, the moment the husband turned a secondary wife out of his house she became straight away disowned. He was instructed that after Tan Sai Im had left the house, whenever the deceased went out, the principal wife Chan Hong Neo always sent out his eldest son with him in order to make sure that the deceased did not visit Tan Sai Im.

The Chief Justice: "If they separated with the intention of permanently severing their connection, I think that would probably be a divorce according to Chinese practice. They seem to recognise that there is such a thing as divorce. Probably, like the marriage ceremony, the divorce would also be a matter of intention."

Tsing Ju-Ching, acting Consul-General for China, gave evidence as to the customs of the Chinese in regard to marriage and divorce. He stated at the outset, in reply to the Chief Justice, that customs in China as to divorces were more or less alike. He stated that a Chinese man could divorce his *tsip*, or secondary wife, if she were disobedient to the orders of the first wife, or if she violated the rules of the family.

The Chief Justice: "Also, I suppose, if she has behaved in an immoral way with anybody?"—"Yes. And if she disobeys her husband."

Asked as to whether there was any formality, Mr. Tsing replied that the prevailing custom was for the man to declare to his clansmen that he had divorced his *tsip*. Clansmen should be called together and the declaration made to them publicly. Otherwise he could call his near relations together and declare that he did not want his *tsip*.

The Chief Justice: "Before it is valid in law, he must do that?"—"Yes." In his opinion, the witness stated such a declaration, even if

made only to a few, was necessary. The declaration need not necessarily be made in the presence of the *tsip*, nor before she has left the house. The reason for this custom was, witness said, because at the time of the marriage ceremony invitations were given to people, and it was only right to let people know of the divorce. It would be enough if the man merely communicated his intention to his relations in the course of casual conversation. If he merely sent her to another house because she did not agree with the principal wife, and he continued to visit her and make her an allowance, that did not amount to a divorce.

Mr. Hoahing, in the course of his reply, remarked there there was no such thing in Singapore as divorce among the Chinese. The evidence of the Consul-General related only to Chinese in China.

The Chief Justice: "That is contrary to the opinion of the Privy Council in regard to the Six Widows' Case. The Privy Council concurred with the conclusion which Mr. Justice Braddell arrived at that concubinage was recognised as a legal institution of Chinese law, conferring upon a *tsip* legal status of a permanent nature which, subject to divorce, entitled her to maintenance during the man's lifetime." They seemed to recognise that a person who took a *tsip* or secondary wife could divorce her in some way."

Hoahing for Tan Sai Im.

Eber for Chan Hong Neo.

SHAW, C.J.—After dealing with the facts, said that there could be no doubt that Tan Sai Im was taken by Siew Guan as a *tsip* or secondary wife. The case for the defendant had been mainly put on the ground that she had ceased to be a secondary wife at the time of Siew Guan's death. There was no assistance to be got from the law Reports or the text-books as to what was necessary to constitute a divorce under Chinese customs, but it had been recognised in the Six Widows' case and also in the case of *Cheang Thye Pin* v. *Tan Ah Loy* that a Chinese man could divorce his *tsip* or secondary wife.

The only evidence he had of the manner in which that could be done by Chinese custom was the evidence of the Consul-General for China, who had stated that divorce was recognised, that it was at will of the husband, who was entitled to divorce his wife if she were disobedient to himself or his principal wife, if she did not conform to the household regulations, or was guilty of immoral conduct. The custom was that the husband should notify the dissolution either to his near relations or to his clansmen. It appeared that the dissolution was something like the inception of the union, that no actual ceremony was needed, and it depended upon the actual intention and notoriety given to the union or dissolution.

In the present case there was evidence that there was a disturbance in the house, and that Tan Sai Im was accused of improper conduct and was turned out of the house. Three witnesses were called to give evidence that the husband told them what had happened and that he had ceased to have anything further to do with her. If that evidence was to be believed it certainly constituted a divorce according to the evidence of custom given by the Consul-General. There were several circumstances which seemed to point to the inevitable conclusion that the parties thought that the dissolution was complete. He had come to the conclusion that the evidence of the defence should be accepted and that Tan Sai Im was not, at the time of Siew Guan's death, his secondary wife. The answer to the issue would be that Tan Sie Im was not a lawful widow of the deceased.

Solicitors for Tan Sai Im (Plaintiff in the Issue)—*Aitken & Ong Siang.*

Solicitors for Chan Hong Neo (Defendant in the Issue)—*Chan & Eber.*

[APPELLATE CIVIL JURISDICTION]

PHERDZAHA MANEEKJI FRAMROZ—Plaintiff.

and

NOWROJI RUSTAMJI MISTRI—Defendant.

[SINGAPORE CIVIL APPEAL No. 8 of 1924]

[SINGAPORE SUIT No. 560 OF 1924.]

Contract of Service—Stipulation—restraint of trade—aerated water manufacturer—employment of manager—threat of employee to establish similar business—reasonableness of restriction.

In 1913 the plaintiff, a mineral water manufacturer and merchant carrying on business in Singapore, engaged the defendant as the manager of the business for a period of ten years, on the condition that "after the employee ceased to be employed whether by effluxion of time or for any other reason he should not for a period of 5 years carry on or be concerned or interested in carrying on a similar business in Singapore or any other place where the plaintiff was carrying a similar business at the date of such termination or solicit any of the customers of the said business or deal otherwise than with the persons then carrying on the said business." The defendant's services terminated on the 1st of November 1923. By notice in writing the defendant informed the plaintiff of his intention to commence a similar business on his own account. In this action the plaintiff claimed an injunction to restrain the defendant from carrying on business as a mineral water manufacturer in opposition to the plaintiff.

Held, on the evidence, that, there being no trade secrets in the plaintiff's business that required to be protected and the defendant not being in a position to detach the plaintiff's customers, the restrictive covenant was not reasonably necessary for the protection of the employer and unenforceable and void.

Upcott (Laycock) with him, for the plaintiff.

G. S. Carver, for the respondent.

Cur. Ad. Vult.